UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD[1]
REGION 32

COMPREHENSIVE CARE OF OAKLAND LP
d/b/a BAY AREA HEALTHCARE CENTER

Employer

Case 32-RD-134177

and

CAYETANO SANCHEZ

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL
UNION - UNITED HEALTHCARE
WORKERS – WEST (SEIU-UHW)

Involved Party Union

SUPPLEMENTAL DECISION ON OBJECTIONS AND NOTICE OF HEARING

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of Service Employees International Union – United Healthcare Workers - West's objections to be conducted. Based upon that investigation, I hereby set for hearing Objections No. 11, 16 through 29, 34, 35, 37, and 38. Also, based upon that investigation, I am overruling Objections No. 1 through 10, 12 through 15, 30, 36 and 39.

THE ELECTION

The Petition in this matter was filed on August 6, 2014. Pursuant to a Decision and

[1] Herein called the Board

Direction of Election that issued on January 20, 2015,[2] a manual ballot election was conducted on February 18 in the following appropriate bargaining unit:

> All full-time and regular part-time Certified Nurse Assistants and Licensed Vocational Nurses employed in the Employer's skilled nursing unit and sub-acute unit, Cooks, Kitchen Helpers, Laundry Workers, Housekeepers, Utility Workers, and Nurse Assistants employed by the Employer at its Oakland, California, facility, excluding registered nurses, office employees, guards and supervisors as defined in the Act.

The Tally of Ballots served on the parties at the February 18 manual ballot count showed the following results:

Approximate number of eligible voters	98
Number of void ballots	1
Number of votes cast for SEIU-UHW	32
Number of votes cast against SEIU-UHW	51
Number of valid votes counted	83
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots	84

The number of challenged ballots was not sufficient to affect the results of the election.

On February 25, Service Employees International Union – United Healthcare Workers - West (Union) timely filed objections, which were served on Comprehensive Care of Oakland LP d/b/a Bay Area Healthcare Center (Employer) and Cayetano Sanchez (Petitioner) by the Region.[3] The Employer provided a position statement and evidence in response to the Union's Objections to the election.

THE OBJECTIONS[4]

Objection No. 1

[2] All dates refer to 2015 unless otherwise noted.
[3] I hereby approve the Union's March 4 request to withdraw Objections No. 31-33.
[4] Petitioner's objections are presented verbatim. By letter dated December 19, the Petitioner submitted an offer of proof regarding anticipated testimony in support of its objections. However, for much of the offer of proof, the Petitioner did not specify which proffered witnesses and arguments applied to a particular objection.

The Employer provided an inadequate *Excelsior* List.

In support of Objection No. 1, the Union stated that the *Excelsior* list was inadequate because it did not contain zip codes, phone numbers, email addresses, worksites for each eligible voter, classifications, and shifts. The Union offered Union Representatives Norma Gutierrez, Adan Cabral, and Sanjanette Fowler to testify that this interfered with the Union's ability to verify the eligibility of individuals that were either included or excluded from the list. The Union stated that the missing email addresses and phone numbers prevented the Union from communicating with eligible voters. I note that the Decision and Direction of Election in this matter contains the Board's standard language regarding the provision of the election eligibility list: "Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters." The Employer timely complied with this requirement by providing the Regional Office with the voter eligibility list on January 27, 2015, and a copy of this list was served on the Petitioner and the Union on January 27, 2015, by the Region. Contrary to the Union's assertion, the Employer did in fact provide zip codes on the *Excelsior* list.

Regarding the omission of phone numbers, email addresses, worksites for each eligible voter, classifications, and shifts, the Employer fully complied with existing Board precedent, which has consistently interpreted *Excelsior Underwear*, 156 NLRB 1236 (1966), as requiring no more than that an Employer provide a printed list consisting of employees' full names and addresses.[5] Indeed, the Board has adhered to this interpretation even in circumstances that would appear to present more compelling justification than that shown here for expanding the

[5] This petition was filed on August 6, 2014, well before the Board's new Rules and Regulations regarding the voter list became effective on April 14, 2015.

requirements of *Excelsior Underwear*. In this regard, in *Trustees of Columbia University*, 350 NLRB 574 (2007), the Board held that it was not objectionable for an Employer that operated a research vessel on which the petitioned-for unit employees worked to refuse to supplement the voter eligibility list with the e-mail addresses of eligible voters, even though the vessel was at sea for most of the pre-election period. In overruling the petitioner's objection, the Board reaffirmed that the applicable standard in assessing whether an Employer has complied with its eligibility list obligation is whether the list provided by the Employer is substantially complete and accurate with respect to providing the information required by *Excelsior Underwear*, namely, employee names and addresses. Id. at 575. Therefore, the Employer's failure to include phone numbers, email addresses, worksites for each eligible voter, classifications, and shifts for each voter on the list would not be objectionable.

Accordingly, I am overruling Objection No. 1 in its entirety.

Objections No. 2, 3 and 39

> **(2) The Employer maintained unlawful rules in an unlawful handbook, which interfered with laboratory conditions for a fair election.**
> **(3) The Employer enforced unlawful rules in an employee handbook which interfered with laboratory conditions for a fair election.**
> **(39) The laboratory conditions for a fair election were destroyed and the outcome of the election was affected because the Region proceeded with an election although a Notice period to remedy the Employer's unfair labor practices had not concluded, thereby creating an impression among eligible voters that the NLRB supported the Petitioner and/or the Employer.**

The Union requested that the Region take administrative notice of the evidence in Case 32-CA-134708 for evidence in support of Objections No. 2 and 3. The Union also proffered names of six witnesses who could testify that the unlawful rules were maintained for a period of time after the petition was filed on August 6, 2014. Based upon the evidence in Case 32-CA-134708, it appears the three rules that the Union is contending have been improperly maintained

are the following Employer House Rules that had been posted in the employee break room since at least 2012: 1) "loitering in the facility while off duty;" 2) "lack of a courteous, professional attitude when interacting with residents, co-workers and other customers, including resident families;" and 3) "any type of verbal or physical altercation with a coworker, resident or customer during work hours or on Employer property." It is noted that in support of Objections No. 2 and 3 and in Case 32-CA-134708, the Union failed to provide any evidence that any of these three rules had ever been enforced or that any employee had ever been disciplined for violating any of these three rules.

The Employer's response to Objections No. 2 and 3 is that the Union negotiated and agreed to the house rules at the bargaining table in 2012, and the Union cannot now claim that they tainted the election. During the investigation of Case 32-CA-134708, the Employer provided the Region with a copy of an April 25, 2012 full tentative agreement for a new collective bargaining agreement signed by both the Union and the Employer, which included, as an Attachment, a copy of the House Rules with the three rules discussed above. During the investigation of Case 32-CA-134708 the Union did not present a witness who could refute the Employer's claim that the Union agreed to the three house rules during the 2012 contract negotiations.

The Union filed Case 32-CA-134708 on August 14, 2014, and pursuant to Casehandling Manual Section 11730.2 the Region blocked the processing of this petition and postponed the pre-election hearing in this matter indefinitely. The Region subsequently made a determination on the merits of Case 32-CA-134708, and found that even assuming, that the Union agreed to the three house rules in bargaining, the rules could be found to be overly broad in violation of Section 8(a)(1) of the Act.

On November 19, 2014, the Regional Director issued an Order rescheduling the pre-election hearing in this matter for December 1, 2014, and the Order also informed the parties that pursuant to Casehandling Manual Section 11731.2 the Region was resuming the processing of the instant petition and it was no longer blocked by Case 32-CA-134708. In reaching its decision to resume processing of the decertification petition the Region considered the fact that the Union had no evidence that the rules had ever been enforced. Furthermore, the Union had no evidence to rebut the Employer's evidence that the Union had agreed to the three house rules during 2012 contract negotiations, the same house rules that the Union relied on to block the decertification election. By letter dated November 28, 2014, I unilaterally approved a settlement agreement for Case 32-CA-134708 that required the Employer to post a Notice to employees. As part of the settlement the Employer agreed to rescind the three house rules and agreed to advise employees in writing that they were no longer maintained.

Based upon the evidence in Case 32-CA-134708, it appears that on December 2, 2014 the Employer posted new House Rules that had the three rules at issue lined out and marked in red, and at the bottom of the list of House Rules the document said: Red-lined items discontinued effective 12/2/2014; all other house rules remain in effect." It also appears that the Employer posted new House Rules on December 10, 2014 and issued a memorandum to the staff on the same date notifying employees that updated House Rules were in effect and posted in the employee break room. It is noted that the rule, "loitering in the facility while off duty," was deleted from the House Rules, and it was not replaced by a new rule. The other two rules were replaced by three new rules that prohibited the following conduct : Using profane or abusive language where the language is insulting, uncivil, contemptuous, vicious, or malicious; Failure to maintain appropriate business decorum; Physical altercations with a coworker, resident, or

customer during work hours or on Employer property. At the bottom of the page after listing all of the House Rules, the Employer added the following new language:

> Notwithstanding the foregoing, nothing herein is intended to prevent employees from discussing their wages or working conditions, or engaging in other conduct protected by Section 7 of the National Labor Relations Act.

On December 30, 3014, the Employer posted in the break room the signed Notice to Employees in Case 32-CA-134708.

In support of Objections No. 2, 3 and 39, the Union notes that the Notice to Employees in Case 32-CA-134708, which involved the unlawful rules, was mailed to the Employer on December 29, 2014, nearly five months after the petition was filed. The Union also asserts that the Region improperly resumed processing the instant petition while the Employer maintained the three House Rules that were found to be improper in Case 32-CA-134708. However, based upon the evidence in Case 32-CA-134708 the three rules at issue appear to have been rescinded on December 2, 2014, and employees were notified in writing on December 10, 2014 that new House Rules were posted in the break room seventy days before the election was conducted on February 18, 2015. The Union's Objection 39 asserts that proceeding with an election prior to the end of the Notice posting period for the settlement agreement in Case 32-CA-134708 created an impression among the eligible voters that the NLRB supported the Petitioner and/or the Employer, but the Union failed to present any evidence to support this assertion.

In *Jurys Boston Hotel*, 356 NLRB No. 113 (2011), the Board found that the employer's maintenance of its overly broad no-solicitation, no-loitering, and no-button rules were a basis for setting aside the election, because each of these rules that were maintained during the critical period "reasonably tended to interfere with employee free choice." The Board distinguished the facts in *Jurys Boston* from the facts in *Safeway, Inc.,* 338 NLRB 525 (2002). The Board noted

that in *Jurys Boston* the union challenged the rules nine weeks prior to the election, the three rules had a closer relationship to election activities than the confidentiality rule in *Safeway*, and the election in *Jurys Boston* was decided by a single vote. In Jurys Boston Hotel the Board was not persuaded that the employer's memo attempting to rescind the no-buttons rule was clearly unambiguous and noted that the rule had been in effect for nine weeks following the filing of the decertification petition.

The situation in this case is different than in *Jurys Boston*. First, it appears that the Union agreed to the no-loitering rule and the other two house rules during 2012 contract negotiations. Moreover, unlike *Jurys Boston*, the three rules in the instant case had been in effect but not enforced since 2012, and were not recently enacted. Second, while the no-loitering house rule arguably has a close relationship to election activities, the other two rules in the instant case have a far less clear relationship to election activities than the no-solicitation and no-button rules in *Jurys Boston*. Third, the Employer rescinded the three rules on December 2, 2014, and on December 10, 2014, seventy days before the election, the Employer unequivocally informed employees in writing that new House Rules were posted in the break room. Finally, the Union lost this election by a substantial margin, unlike *Jurys Boston* which was decided by a single vote. In these circumstances, and in particular because the disputed House Rules were not in effect during the 70 days immediately preceding the election, I find that the Employer did not maintain House Rules that could have reasonably affected employee free choice in the February 18 election.

In support of Objection No. 3, the Union proffered the name of an employee who was a known Union supporter who could testify that on February 16 she and an unspecified number of other employees were told by the Director of Staff Development that they were not allowed to be

at the facility after clocking out and could not attend an all-staff meeting.[6] The Union has not presented evidence that this alleged statement by the supervisor was disseminated to other employees or that employees were reluctant to visit the facility after clocking out. Moreover, as previously noted, the Union failed to provide any evidence during the investigation of Case 32-CA-134708 that the Employer had ever enforced the three disputed House Rules. This February 16 statement about not being allowed at the facility after clocking out was allegedly made by one supervisor more than seven weeks after the Employer's no-loitering policy had been rescinded, and it does not comport with any of the Employer's existing House rules. Rather, at most, this was an example of one supervisor making an oral pronouncement on a single occasion seven weeks after the no-loitering rule was rescinded.

Based on the foregoing, I am overruling Objections No. 2, 3 and 39 in their entirety.

Objection No. 4

The election was conducted on the Employer's premises where a fair election could not take place because of the Employer's conduct during the critical period and on Election Day.

The Casehandling Manual (Part Two) Representation Proceedings Section 11302.2 provides that elections should be held somewhere on the employer's premises in the absence of good cause to the contrary. Section 11302.2 provides that the Regional Director may direct that an election be conducted away from the employer's premises in situations where "an election held on the employer's premises would compromise the prospect that employees will be able to exercise free choice. Examples of such conduct might include discharges or other discrimination directed at a significant portion of the voting unit, threats of plant closure, or other serious consequences if the union were to prevail and threats of violence to union adherents." The

[6] To the extent that this evidence deals with disparate enforcement of the Employer's policy for off-duty access or deals with denying known union adherents the opportunities to attend captive audience meetings, those issues are dealt with below in Objections No. 7 and 14.

Union failed to request prior to the election that the election be held away from the Employer's premises, and prior to the election the Union had not provided the Region with any evidence of Employer conduct that would necessitate holding the election away from the Employer's premises. Under these circumstances, I am overruling Objection No. 4.

Objections No. 5, 6, 8 and 9

> **(5) The Employer maintained a facially unlawful no-solicitation and no-distribution rule.**
> **(6) The Employer, by and through its agents, discriminately enforced its no-solicitation and no-distribution rule.**
> **(8) The Employer, by its agents, imposed a discriminatory, no-solicitation and/or discriminatory no-distribution rule on employees in a matter designed to interfere with conduct of a fair election.**
> **(9) The Employer, by and through its agents, interfered with laboratory conditions of a fair election by creating a significant imbalance in opportunities to communicate pro-Union and anti-Union views to employees during the critical period because of the Employer's enforcement of no-solicitation and no-distribution rules that it did not apply to the Employer's activities or to a third party anti-Union consultant.**

With respect to Objections No. 5 and 8, the Union failed to provide a copy of any written no-solicitation, no distribution policy that the Employer either maintained or created during the critical period after the filing of the petition in this matter. In its position statement the Employer asserts that it does not have a written no-solicitation, no-distribution policy.

With respect to Objections No. 6, 8 and 9, the Union has not presented any evidence that employees who were Union supporters were prevented by the Employer from engaging in solicitation or distribution activities. Furthermore, the Union has not presented evidence to establish that the Employer enforced any no-solicitation, no-distribution rules in a discriminatory manner.

The Board has maintained that a hearing on objections is held only when there are substantial and material issues of fact. *Care Enterprises*, 306 NLRB 491 (1992). Accordingly, a

party raising objections cannot rely on bare assertions to raise an issue requiring a hearing. As the objecting party, the Petitioner has the duty of furnishing evidence or description of evidence that, if credited at a hearing, would warrant setting aside the election. *Builders Insulation, Inc.*, 338 NLRB 793 (2003); *The Daily Grind*, 337 NLRB 655 (2002) (unsupported allegations are insufficient to trigger administrative investigations); *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983). See NLRB Casehandling Manual (Part Two) Representation Proceedings (CHM), Section 11392.6. This duty to furnish evidence may be satisfied by providing specific affidavit testimony and other specific evidence or by identifying witnesses and providing a summary of their anticipated testimony, "specifying which witnesses would address which objection." *Transcare New York, Inc.*, 355 NLRB No. 56 at p. 2 (2010). Here, Petitioner has failed to provide any evidence of what the Employer's no-solicitation, no-distribution rules are, and Petitioner has failed to provide evidence that any such rules have been enforced in a discriminatory manner.

Accordingly, I am overruling Objections No. 5, 6, 8 and 9.

Objections No. 7, 11, 14 and 15

> **(7) The Employer, by and through its agents, discriminately enforced its access policy by allowing anti-Union supporters to access their facility when off-duty, but denying Union supporters the same opportunity.**
> **(11) The Employer, by and through its agents, interfered with the laboratory conditions of a fair election by holding mandatory captive audience meetings in the 24-hour period before the scheduled time of the election during which the Employer's agents engaged in campaigning against Union representation.**
> **(14) The Employer, by and through its agents, interfered with the laboratory conditions of a fair election by denying known union adherents from entering captive audience meetings.**
> **(15) The Employer, by and through its agents, during the critical period changed the application of its access policy by denying off-duty union supporters access onto the Employer's property.**

In support of these Objections, the Union proffered the name of employee who is a known Union supporter who could testify that on February 16 the Union supporter and other employees were told by Employer supervisors and managers, including the Director of Staff Development (DSD), that they were not allowed to be at the facility after clocking out and could not attend a captive audience meeting that was to be held after the employees clocked out. Additionally, the Union proffered the name of another employee who is a Union supporter who was prevented by the DSD from attending a captive audience meeting when she arrived about thirty minutes prior to the start of her shift on about February 16. The Union asserts that another employee Union supporter can testify that she was prevented from attending captive audience meetings held on February 9 and 17, and another employee Union supporter can testify that he/she was not permitted to attend one of the captive audience meetings prior to the election.

The Employer contends that it allowed Union supporters on the property while they were off-duty for the purpose of talking to employees and/or handling Union business. The Employer asserts that all group meetings ceased on Monday, February 16, more than 24 hours prior to the start of the election on February 18. The Employer denies that it prevented known Union supporters from attending captive audience or group meetings as all bargaining unit employees were invited to attend the meetings. However, the Employer asserts that even if known Union supporters were excluded from captive audience meetings it is permissible for the Employer to exclude them.

With respect to Objections No. 7 and 15, the Union has proffered the name of one known Union adherent who can testify that she and other unspecified Union supporters were told on February 16 that they were not allowed to be on the property after their shifts. Objection No. 7 alleges that the Employer has discriminatorily or disparately enforced its policy with respect to

access to the facility during off-duty hours, and Objection No. 15 alleges that the Employer changed its access policy by denying access to off-duty Union supporters. However, the Union has failed to provide any evidence to establish that Union adherents were in fact denied access to the facility when they were off duty or that Union supporters were treated differently than anti-Union employees. In this regard, the Union did not proffer any evidence regarding what anti-Union employees were allowed or not allowed to do when they were off-duty. Moreover, the Union failed to present any evidence that any employee was discouraged from attempting to access the Employer's facility after their shift. Thus, the Union has failed to provide evidence in its offer of proof to establish that the Employer has discriminatorily or disparately enforced its policy with respect to access to the facility during off-duty hours. Accordingly, I am overruling Objections No. 7 and 15.

In support of Objection No. 11 the Union has proffered the name of one employee witness who can testify that she was excluded from a captive audience meeting on February 17, within 24 hours of the February 18 election. The Employer contends that no captive audience meetings were held on February 17. An employer is prohibited from conducting captive audience meetings during the 24 hours preceding the opening of the first polling session. *Peerless Plywood Co.*, 107 NLRB 427 (1953). Under these circumstances, I find that Objection No. 11 raises issues of material fact or law that can best be resolved by a hearing.[7]

In support of Objection No. 14, the Union has proffered names of employee witnesses who are Union supporters who can testify that there were occasions when they were told that they could not attend captive audience meetings that were being conducted by the Employer on dates prior to February 17. Even assuming these facts, the Union has failed to establish that this

[7] The only issue being set for hearing regarding Objection No. 11 is whether or not any captive audience meetings were conducted by the Employer during the 24 hours prior to the start of the election.

conduct provides a basis for setting aside the election. The Board has long held that an employer can exclude those suspected of supporting the union from election campaign meetings. *Luxuray of New York*, 185 NLRB 100 (1970); and *AutoZone, Inc*., 315 NLRB 115 (1994). Similarly, the Board has held that a union may exclude anti-union employees from election campaign meetings. *Teamsters Local 856 (Holiday Inn),* 302 NLRB 572 (1991). The Union has not presented any evidence that Union supporters lost any benefits, such as overtime pay or free meals, due to the fact that they were excluded from attending some captive audience meetings. *Delchamps, Inc*., 244 NLRB 366 (1979); and *Wimpey Minerals USA, Inc.,* 316 NLRB 803 (1995). Accordingly, I am overruling Objection No. 14.

Objections No. 10, 12 and 13

> **(10) The Employer, by and through its agents, during the critical period, interfered with the laboratory conditions of a fair election by holding mandatory captive audience meetings during which the Employer's agents engaged in campaigning against Union representation.**
> **(12) The Employer, by and through its agents, interfered with laboratory conditions of a fair election by holding mandatory captive audience meetings on election day during which the Employer's agents engaged in campaigning against union representation.**
> **(13) The Employer, by and through its agents, interfered with the laboratory conditions of a fair election by holding mandatory captive audience meetings when the polls were open during which the Employer's agents engaged in campaigning against union representation.**

In support of Objections No. 12 and 13 the Union has failed to provide any evidence that the Employer held captive audience meetings with groups of employees on the day of the election or during the time when the polls were open on the day of the election. The Employer asserts that all group meetings ceased on Monday, February 16, more than 24 hours prior to the start of the election on February 18.

In support of Objection No. 10 the Union has proffered the names of three employee witnesses to testify that the Employer began holding captive audience meetings during the week

of February 2, but the Union has failed to establish that it was improper for the Employer to conduct captive audience meetings on or before February 16. The Employer argues that the Employer is permitted to conduct group meetings on Employer time on the Employer's premises, without it being grounds for setting aside an election if the captive audience meetings do not take place during the twenty-four hours prior to the start of the election. *Peerless Plywood Co.*, 107 NLRB 427 (1953).

Accordingly, I am overruling Objections No. 10, 12 and 13.[8]

Objection No. 16

The Employer, by and through its agents, interfered with the laboratory conditions of a fair election by allowing the Petitioner and his supporters to engage in an anti-union campaign while on work time and in work areas.

The Union proffered the name of an employee who could testify that Petitioner Cayetano Sanchez campaigned to employees while on work time with the knowledge of the Charge Nurse during the NOC shift. The Union also proffered the name of another employee who could testify that a known supporter of the Petitioner was allowed to visit the laundry work area while on working time to campaign to employees in the laundry department. Accordingly, I find that Objection No. 16 raises issues of material fact or law that can best be resolved by a hearing.

Objection No. 17

The Employer, by and through its agents, during the critical period, changed the application of its access policy by restricting access of Union Representatives.

The Union proffered the name of Union representative Sanjanette Fowler who could testify that she was notified in writing during the critical period by the Employer's administrator Shirley Ma that the access policy for Union representatives had changed. The Union

[8] Objections No. 19, 20, 21 and 22 address any improper promises of benefits that might have made to employees during captive audience meetings. Objection No. 7 deals with the issue of whether any captive audience meetings were conducted less than 24 hours prior to the start of the election on February 18.

representatives were ordered to check in with the administrator and state the reason for each visit. Fowler shared the Employer administrator's letter with some bargaining unit employees. The Union asserts that Fowler could also testify that after learning about the administrator's letter bargaining unit employees stopped visiting her in the Employer's break room and avoided her when she was at the Employer's facility. The Employer's position statement does not confirm or deny whether there was a change in the application policy for Union representative. However, the Employer asserts that Union representatives did come to the Employer's facility on a daily basis to speak to employees about the campaign and union business. Accordingly, I find that Objection No. 17 raises issues of material fact or law that can best be resolved by a hearing.

Objections No. 18, 24, 25 and 37

> **(18) The Employer, through its agents, during the critical period, created an atmosphere of fear, intimidation, and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election, by having supervisory personnel follow Union Representatives while in the facility.**
> **(24) The Employer, by and through its agents, engaged in surveillance and coercion of employees in the exercise of their rights guaranteed by Section 7 of the Act.**
> **(25) The Employer, by and through its agents, created the impression of surveillance of employees.**
> **(37) The Employer, by and through its agents, created an atmosphere of fear and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election, by having increased management presence in employee break rooms during the critical period.**

In support of Objections No. 18, 24, 25 and 37 the Union proffered the names of seven employees that could testify that during the critical period prior to the election the Employer increased the presence of managers and supervisors in the break rooms, especially when Union Representatives were present. These witnesses could also testify that when Union representatives came to the Employer's facility during the critical period they were followed by Charge Nurses. The Union asserts that these actions resulted in surveillance of employees when they were engaged in activities on behalf of the Union in the break rooms and created the

impression of surveillance elsewhere in the facility. In its position statement the Employer denies that management had an increased presence in the break rooms, denies that supervisors or managers followed Union representatives in the facility, and denies that it engaged in surveillance of employees who were engaged in Union activities. Accordingly, I find that Objections No. 18, 24, 25 and 37 raise issues of material fact or law that can best be resolved by a hearing.

Objections No. 19, 20, 21 and 22

> **(19) The Employer, by and through its agents, promised employees that it would not decrease their current wages or benefits if they voted against union representation.**
> **(20) The Employer, by and through its agents, promised not to decrease current wages or benefits as an inducement to vote against union representation.**
> **(21) The Employer, by and through its agents, during the critical period promised employees that it would grant additional benefits to employees if they voted against union representation.**
> **(22) The Employer, by and through its agents, made promises of benefits as an inducement to vote against union representation.**

The Union proffered the name of seven employees who could testify that the Employer's Administrator Shirley Ma assured employees that she would not make any changes to their current wages, benefits, or health insurance if they voted against the Union during captive audience meetings. The Union proffered the name of a Union Representative that could testify that employees told her that they were not going to vote or not vote in support of the Union because of the Administrator's assurances.

The Union proffered the name of two employees who could testify that the Employer's Administrator Shirley Ma promised to put her promises of not making any changes to benefits in writing when the Union is decertified and that employees would be given more benefits like gift cards and parties because she would not need to ask the Union for permission to do so.

Accordingly, I find that Objections No. 19 through 22 raise issues of material fact or law that can best be resolved by a hearing.

Objection No. 23

> **The Employer, by and through its agents, threatened eligible voters in the dietary department with termination and/or subcontracting of their work if they voted in favor of continued union representation.**

The Union proffered the name of a bargaining unit employee that could testify that during the critical period a member of the Employer's management threatened dietary department workers with termination if they voted for the Union. The Employer denies that it threatened employees in the dietary department with termination and/or subcontracting if they voted in favor of the Union. Accordingly, I find that Objection No. 23 raises issues of material fact or law that can best be resolved by a hearing.

Objections No. 26, 27, 28, 29 and 30

> **(26) The Employer, by and through its agents, interrogated workers about their support for the Union.**
> **(27) The Employer, by and through its agents, questioned and polled employees regarding their support for the Union during the pre-election period.**
> **(28) The Employer, by and through its agents, interrogated workers about their support for the union during mandatory one-on-one meetings in the critical period.**
> **(29) The Employer, by and through its agents, interrogated workers about their support for the union during mandatory one-on-one meetings on Election Day.**
> **(30) The Employer, by and through its agents, interrogated workers about their support for the union during mandatory one-on-one meetings when the polls were open.**

The Union proffered the name of an employee who could testify that during the critical period Employer's Administrator Shirley Ma polled and interrogated employees how they intended to vote in the election and/or why they were voting for or against the Union. The Union proffered the name of another employee who could testify that Administrator Ma walked around the facility during the critical period interrogating employees about the election and pulled

employees into her office for one-on-one meetings. The Union proffered the name of third employee could testify that the day of the election, February 18, he/she was brought in the morning to the Administrator's office by a supporter of the petitioner, and Administrator Ma then questioned the employee about the election. The Employer denies that the Employer interrogated and/or polled employees regarding their support for the Union. The Employer also denies that it had mandatory one-on-one meetings with employees regarding the election at any time. Accordingly, I find that Objections No. 26, 27, 28 and 29 raise issues of material fact or law that can best be resolved by a hearing.

The Union failed to present evidence that any interrogations or one-on-one meetings actually took place on February 18 during the specific hours that the polls were open, and Objection No. 29 above already deals with any interrogations or one-on-one meetings that took place sometime on February 18. Accordingly, I am overruling Objection No. 30.

Objections No. 34 and 35

> **(34) The Employer, by and through its agents, including its observer, created an atmosphere of fear and coercion by keeping lists of employees who voted or making an appearance of keeping lists of employees who voted.**
> **(35) The Employer, by and through its agents, engaged in surveillance or the appearance of surveillance of employees as they were voting in the National Labor Relations Board conducted election, interfering with the laboratory conditions necessary for the conduct of a fair election.**

The Union proffered the name of three employees who could testify that on the day of the election Administrator Ma went around the facility and told working employees that they did not vote during the first polling session and needed to vote in the next polling session. The Union proffered the names of two employees and Union representative Fowler who could testify that the polling room was next to the office of a manager and that there were cameras by the door where employees entered the building to line up for voting. These witnesses can also testify that

the cameras were not turned off on the day of the election, and that Administrator Ma is known to monitor the security footage from her office and Charge Nurses are known to watch the video surveillance from monitors at the nurses' stations. The Union proffered Union Representative Fowler to testify that Employer's Observer maintained a list of voters and called employees off that list to get them to vote. However the Union has not provided evidence that the Employer's Observer called employees during the polling hours while she was in the polling place, the Union's evidence only deals with the Employer's Observer calling employees at other times on February 18. The Employer denies that it maintained a list of who voted or tracked who voted in the February 18 election, and denies engaging in surveillance of employees who were going to the polls to vote in the election. Accordingly, I find that Objections No. 34 and 35 raise issues of material fact or law that can best be resolved by a hearing.

Objection No. 38

> **The Employer, by and through its agents, during the critical period, created an atmosphere of fear, intimidation, and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election, by removing pro-union flyers posted on the Union's bulletin board and replacing them with anti-union literature.**

In support of Objection No. 38 the Union proffered the name of an employee who could testify that in the last few days prior to the election Supervisor "Queenie" ripped down pro-Union materials from the Union's bulletin board in the dietary department, and replaced them with anti-Union literature. The Employer denies that it removed any Union flyers or literature from the Union's bulletin board, and the Employer denied that it replaced such literature with anti-Union literature during the critical period.

I find that Objection No. 38 raises issues of material fact or law that can best be resolved by hearing.

Objection No. 36

The Employer, by and through its agents, including third parties, created an atmosphere of fear and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election.

Other than the evidence described above in support of the Union's other Objections to the election, the Union has not presented any additional evidence that during the critical period the Employer created an atmosphere of fear and coercion. Under these circumstances, I am overruling Objection No. 36.

CONCLUSION

In sum, for the reasons set forth above, I hereby set for hearing Objections No. 11, 16 through 29, 34, 35, 37, and 38. Also, based upon that investigation, I am overruling Objections No. 1 through 10, 12 through 15, 30, 36 and 39.

NOTICE OF HEARING

IT IS HEREBY ORDERED that a hearing on Objections No. 11, 16 through 29, 34, 35, 37, and 38, be held before a duly designated Hearing Officer of the National Labor Relations Board.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within fourteen (14) days from the issuance of said report, any party may file with the Board an original and one (1) copy of exceptions to such report, with supporting brief, if desired. Immediately upon the filing of such exceptions, the party filing the same shall serve copy thereof, together with a copy of any brief filed, on the other party to the proceeding and with the undersigned. In the Regional Office's initial correspondence, the parties

were advised that the Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Director's initial correspondence for guidance in doing so. Guidance regarding electronic filing can also be found under "E-Gov" on the Board web site: www.nlrb.gov. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing exceptions may decide the matter forthwith upon the record or may make other disposition of the case.

PLEASE TAKE NOTICE that, on Tuesday, May 19, 2015, at 9:00 a.m., in the Oakland Regional Office, at 1301 Clay Street, Suite 300N, Oakland, California, and continuing on consecutive days thereafter until completed, a hearing pursuant to Section 102.69 of the Board's Rules and Regulations will be conducted before a Hearing Officer of the Board upon the aforesaid objections, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to said matters.

DATED AT Oakland, California this 30th day of April, 2015.[9]

/s/ George Velastegui
George Velastegui, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5224

[9] Under the provisions of Section 102.69 and I02.67 of the Board's Rules and Regulations, exceptions to this Supplemental Decision on Objections may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14TH Street, N.W., Washington, DC 20570-0001. Exceptions must be received by the Board in Washington, DC, by May 14 , 2015. *The Exceptions may be filed electronically through the Agency's website, www.nlrb.gov. but may not be filed by facsimile.* Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. *Once the website is accessed, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.